

907 KAR 1:755. Preadmission Screening and Resident Review Program.

RELATES TO: KRS 205.558, 42 C.F.R. 435.1009, 483.100-483.138, 42 U.S.C. 1396r

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.558, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the program requirements and payment provisions for preadmission screening and resident review (PASRR).

Section 1. Definitions. (1) "Appropriate placement" means the admission to a nursing facility of an individual with mental illness, an intellectual disability, or a related condition if:

(a) Based on the individual's needs, he meets the level of care standards for nursing facility admission as established in 907 KAR 1:022; and

(b) The individual's needs for treatment may be met by the level of services delivered in the nursing facility alone or, if necessary, through nursing facility services supplemented by specialized services provided by or arranged through the Department for Behavioral Health, Intellectual and Developmental Disabilities as established in Section 5 of this administrative regulation.

(2) "Department for Behavioral Health, Intellectual and Developmental Disabilities or DBHDID" means the state agency or its designee with the responsibility for both the evaluation and determination functions for individuals with serious mental illness, an intellectual disability, or a related condition as defined in 42 CFR 483.106(d) and (e).

(3) "Exempted hospital discharge" means, as it is defined in 42 CFR 483.106(b)(2), an individual:

(a) Who is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(b) Who requires nursing facility services for the condition for which he received care in the hospital; and

(c) Whose attending physician has certified, prior to admission to the nursing facility, that the individual is likely to require less than thirty (30) days nursing facility services.

(4) "Intellectual disability" means an individual's condition which has been determined to have a level of intellectual disability (mild, moderate, severe, or profound) as defined in 42 C.F.R. 483.102(b)(3).

(5) "Interfacility transfer" means an individual who is transferred from one nursing facility to another nursing facility, with or without an intervening hospital stay.

(6) "Level of care of nursing facility services" means those standards as defined in 907 KAR 1:022, Section 4, and in 907 KAR 1:025.

(7) "New admission" means an individual who is admitted to a nursing facility (NF) for the first time or who is not a readmission or an exempted hospital discharge.

(8) "Nursing facility" or "NF" means a facility meeting the requirements established in 907 KAR 1:022.

(9) "Preadmission screening" means the process which:

(a) Screens and identifies an individual with a serious mental illness, an intellectual disability, or a related condition prior to admission to an NF;

(b) Results in a determination, based on a physical and mental evaluation of each individual with mental illness, an intellectual disability, or a related condition of the appropriateness of the individual's admission to an NF; and

(c) Identifies appropriate services if the individual is admitted to an NF.

(10) "PRO" means a peer review organization which is under contract with the department.

(11) "Provisional admission" means an individual:

(a) Is admitted to an NF for fourteen (14) days or less before a PASRR level II is required;

(b) Meets the NF's level of care as established in 907 KAR 1:022; and

(c) 1. Has been diagnosed with delirium, pursuant to 42 CFR 483.130(d)(4), which precludes an accurate diagnosis and assessment until the delirium clears; or

2. Is in need of respite for an in-home care giver and to whom the individual with serious mental illness, an intellectual disability, or a related condition is expected to return after fourteen (14) days.

(12) "Readmission" means an individual who is readmitted to an NF from a hospital to which he was transferred for the purpose of receiving acute inpatient care.

(13) "Related condition" means, as it is defined in 42 CFR 435.1009, a severe, chronic disability that shall meet the following conditions:

(a) Cerebral palsy or epilepsy; or

(b) Any other condition, other than mental illness, found to be closely related to an intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability, and requires treatment or services similar to those required for these persons; and

(c) Is manifested before the person reaches age twenty-two (22);

(d) Is likely to continue indefinitely; and

(e) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; and

6. Capacity for independent living.

(14) "Serious mental illness" means an individual's condition which meets the definition in 42 CFR 483.102(b)(1).

(15) "Significant change" means that the individual's condition has immediate treatment needs requiring a comprehensive reassessment and material change in plan of care established by the Long Term Care Resident Assessment Instrument User's Manual.

(16) "Specialized services for mental illness" means, as it is defined in 42 CFR 483.120(a)(1), the implementation of an individualized plan of care that:

(a) Is developed and supervised by a physician;

(b) Is provided by an interdisciplinary team of qualified mental health professionals;

(c) Prescribes specific therapies and activities for the treatment of a person who is experiencing an acute episode of serious mental illness which necessitates continuous supervision by trained mental health personnel; and

(d) Requires the level of intensity provided in a psychiatric inpatient hospital.

(17) "Specialized services for an intellectual disability or a related condition" means, as it is defined in 42 CFR 483.120(a)(2) and 483.440(a)(1), the continuous, aggressive and consistent

implementation of a program of specialized and generic training, treatment, health and related services, which are comparable to services an individual receives in an intermediate care facility for individuals with an intellectual disability (ICF-IID), or in a community based waiver program which provides services to persons with an intellectual disability or a related condition in which twenty-four (24) hour supervision is available that is directed toward:

- (a) The acquisition of the skills necessary for the person to function with as much self-determination and independence as possible;
- (b) The prevention or deceleration of regression or loss of current optimal functional status; and
- (c) The coordination and interaction, at all times and in all settings, of all staff and the individual served, in the implementation of the specified individual program plan (IPP) objectives for the individual.

Section 2. General Applicability. (1) The provisions of this administrative regulation shall be applicable to an individual applying for admission to, or continued stay in, a nursing facility (NF) participating in the Kentucky Medicaid Program.

(2) Pursuant to 42 CFR 483.106(d) and (e), DBHDID shall be responsible for PASRR determination and evaluation functions.

(a) The Division of Behavioral Health of DBHDID shall be responsible for determining and evaluating whether an individual applying for admission to an NF needs NF services and specialized services for an intellectual disability.

(b) The Division of Behavioral Health of DBHDID shall be responsible for determining whether an individual applying for admission to an NF needs NF services and specialized services for mental illness.

(c) The department may delegate the authority to evaluate whether an individual who is applying for admission to an NF needs NF services and specialized services for mental illness to the Division of Behavioral Health.

(d) The Division of Behavioral Health may delegate the evaluation and determination functions for which they are responsible except that the designee shall not be an NF or an entity that has a direct relationship or indirect affiliation or relationship with an NF.

(3) For nursing facility reimbursement of services by the Medicaid Program, an individual shall be Medicaid eligible and meet the patient care criteria specified in 907 KAR 1:022 and 907 KAR 1:025.

Section 3. Deemed Consent for PASRR. An individual applying for admission to, or requesting a continued stay in, a nursing facility participating in Medicaid shall be deemed to have given consent for the department to make the determination of appropriateness for the individual to enter or remain in the facility using the standards specified 42 U.S.C. 1396r.

Section 4. Responsibility for Performing the Level I PASRR. (1) A nursing facility, prior to admitting an individual, except a readmission or an interfacility transfer, shall conduct a Level I PASRR. The Level I PASRR is an identification function, which process shall comply with the requirements of 42 CFR 483.128.

(2) If a positive response is noted in the Level I PASRR, a Level II PASRR shall be performed prior to the individual's admission to an NF unless the individual is a provisional admission, readmission, interfacility transfer or exempt hospital discharge.

(a) The Level II PASRR shall be used to evaluate and determine if an individual needs NF and specialized services.

(b) The individual or legal guardian of an individual who is identified in the Level I PASRR as suspected of having a mental illness, an intellectual disability, or a related condition shall be notified by the NF of a referral to DBHDID for Level II PASRR.

(3) If a Level II PASRR is required, the nursing facility shall contact DBHDID to perform the Level II PASRR as follows:

(a) For a new admission, an NF shall first conduct a Level I PASRR prior to admission, notify DBHDID if a Level II PASRR is necessary, and complete the Level II PASRR prior to admission.

(b) For an exempt hospital discharge, an NF shall first conduct a Level I PASRR prior to admission and shall notify DBHDID prior to the end of the exempt thirty (30) days if the individual is found to require more than thirty (30) days of NF care. DBHDID shall conduct a Level II PASRR evaluation and complete the determination within forty (40) calendar days of the date of admission to the NF.

(c) For a provisional admission pending clearing of delirium, DBHDID shall conduct a Level II PASRR and make an evaluation and determination of the need for specialized services within nine (9) working days of the referral to DBHDID. The referral to DBHDID shall be made within the fourteen (14) day provisional admission.

(d) If a significant change in the individual's condition occurs, the NF shall notify DBHDID within twenty-one (21) days and DBHDID shall complete the Level II PASRR within nine (9) working days.

(e) The Level II PASRR process shall comply with the requirements of 42 CFR 483.128 through 483.136.

(4) An NF shall transmit to the PRO a completed copy of an individual's PASRR prior to or simultaneously with a request for certification of level of care for an individual's admission to an NF.

Section 5. Responsibility for Performing the Level II PASRR. DBHDID shall be responsible for:

(1) Determining whether an individual entering or remaining in an NF is mentally ill, has an intellectual disability, or has a related condition;

(2) Determining whether the individual requires the level of services provided by an NF in accordance with 42 CFR 483.132;

(3) If the nursing facility level of service is required, determining if the individual requires specialized services or services of a lesser intensity than specialized services for mental illness, an intellectual disability, or a related condition in accordance with 42 CFR 483.134 and 483.136;

(4) Contracting with community mental health centers for evaluations and determinations if the individual is mentally ill, has an intellectual disability, has a related condition or requires specialized services;

(5) Contracting with other agencies, organizations or entities, if necessary, to fulfill DMHMRS' requirements with regard to the PASRR function so long as it retains ultimate control and responsibility for the performance of its obligations under 42 CFR 483.100 - 138 and this administrative regulation; and

(6) Notifying the individual or his legal guardian of the written findings of the Level II report and explaining the meaning of the report.

Section 6. Payments for PASRR Evaluations and Determinations. (1) The department shall reimburse DMHMRS for the cost of providing PASRR services under this administrative regulation.

(2) The department's reimbursement to DMHMRS for this purpose shall not exceed the actual cost to DMHMRS, including contract costs, of implementing and operating the PASRR program.

(3) Except as provided in subsection (4) of this section, the department shall reimburse an NF if:

(a) The Level I and, if required, Level II PASRR are completed prior to a new admission and in a timely fashion as established in Sections 4 and 5 of this administrative regulation; or

(b) A review is required because of a significant change in the individual's condition, and it is performed timely in accordance with Sections 4 and 5 of this administrative regulation.

(4) If a Level I and, if required, a Level II PASRR is not timely completed prior to admission or a subsequent review is required but not timely performed in accordance with Section 8 of this administrative regulation, but the required PASRR is performed at a later date, reimbursement shall be made for NF services provided after the PASRR is completed if the individual is determined to need NF level of care.

(5) The department shall not reimburse an NF for specialized services provided to an individual who is mentally ill, has an intellectual disability, or has a related condition and is in an NF. Services of a lesser intensity than specialized services shall be provided by an NF to an individual so identified in a Level II PASRR.

Section 7. Admissions Criteria Under PASRR. (1) An admission to an NF shall be in accordance with 42 U.S.C. 1396r.

(2) An individual who is mentally ill, to have an intellectual disability, or has a related condition may be admitted to an NF if:

(a) The PASRR determines that he requires NF level of care; and

(b) A determination of the need for specialized services for mental illness, mental retardation, or a related condition is made.

(3) An individual who is mentally ill, to have an intellectual disability, or has a related condition and who does not require NF level of care shall not be admitted to an NF regardless of whether he requires specialized services for mental illness or an intellectual disability.

Section 8. Criteria for Subsequent Reviews. (1) An individual in an NF shall not be subject to mandatory annual resident review in accordance with 42 U.S.C. 1396r. If an individual experiences a significant change in condition, a PASRR shall be conducted as established in Sections 4 and 5 of this administrative regulation.

(2) An individual who is determined not to be mentally ill, not to have an intellectual disability, or not to have a related condition shall not be subject to further PASRR activity.

(3) An individual who is determined to be mentally ill, to have an intellectual disability, or to have a related condition but who requires the level of care provided by an NF may remain in the facility. A determination as specified in Section 5 of this administrative regulation shall be made as to whether specialized services for mental illness, intellectual disability, or a related condition are required.

(4) An individual who is mentally ill, has an intellectual disability, or has a related condition but who is determined not to require the level of care provided by an NF may remain in the facility if he has continuously resided in an NF for thirty (30) months or more before the date of the determination. If he requires specialized services for mental illness, intellectual disability, or a related condition, DBHDID shall be responsible for the cost of those services.

(5) An individual who is mentally ill, has an intellectual disability, or has a related condition and who is determined not to require the level of care provided by an NF but does require specialized services and who has resided in an NF for less than thirty (30) consecutive months

shall be discharged from the NF in accordance with 42 CFR 483.12 to an appropriate setting where specialized services shall be provided or arranged. The individual shall be advised by DBHDID of his discharge rights in accordance with 42 CFR 431.200 through 431.260 and 483.12.

(6) An individual who is mentally ill, has an intellectual disability, or has a related condition and who is determined not to require the level of care provided by an NF and does not require specialized services, regardless of length of stay, shall be discharged. The individual shall be advised by DBHDID of his discharge rights in accordance with 42 CFR 431.200 through 431.250 and 483.12.

Section 9. Responsibility of the Department for Inappropriately Placed Persons. (1) The department shall be responsible for the orderly discharge of an individual determined through the PASRR process established in this administrative regulation to be inappropriately placed.

(2) DBHDID shall be responsible for providing, or arranging for the provision of, specialized services to an individual for whom that need has been determined.

Section 10. Appeals. An individual who is determined not to require NF services or specialized services as a result of a PASRR determination by DBHDID may appeal the denial in accordance with 907 KAR 1:563.

Section 11. Incorporation by Reference. (1) The Manual, Long Term Care Resident Assessment Instrument User's Manual Version 2.0 for use with version 2.0 of the Health Care Financing Administration's Minimum Data Set, Resident Assessment Protocols and Utilization Guidelines, October 1995, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (25 Ky.R. 1776; 2396; eff. 4-21-1999; TAm eff. 7-16-2013; Crt eff. 7-23-2018.)